

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA

Plaintiff,

v.

1:18-CV-552

\$15,290.00 in UNITED STATES CURRENCY,

Defendant.

Thomas J. McAvoy, Senior District Judge.

DECISION & ORDER

The United States moves for default judgment in this case that seeks forfeiture and condemnation of \$15,290.00 in United States currency. The United States filed a Complaint on May 5, 2018, alleging that the New York State Police had seized the defendant from Randolph X. Andino on October 29, 2017 during a drug arrest. See Complaint, dkt. # 1, at ¶¶ 2, 9-16. Pedro Guerrero was a passenger in the vehicle. Id. at ¶ 9. The government alleged that the currency was subject to forfeiture pursuant to 21 U.S.C. § 881(a)(6) as money “traceable to” or “used or intended to be used to facilitate” a violation of the controlled substance laws. Id. at ¶ 7. The Complaint named Andino as a potential claimant of the currency. Id. at ¶ 17. His attorney had filed an administrative claim on the money. Id.

The Court issued a Warrant for Arrest of Articles in Rem on May 9, 2018. See dkt. # 2. That warrant was returned executed on May 14, 2018. See dkt. #s 3-4. On May 11, 2018, US Marshals served Andino with the Verified Complaint, Warrant for Arrest, and third-party packet personally and through his attorney. See dkt. #s 5, 6. Marshals served

Guerrero with a copy of the Verified Complaint, Warrant for Arrest and the third-party packet regarding the currency on May 18, 2018. On June 6, 2012, the United States informed the Court that a Notice of Civil Forfeiture had been posted on an official government internet site, www.forfeiture.gov, for at least 30 consecutive days. See dkt. # 7. The filing included a copy of the notice which described the amount of currency seized and the place and circumstances of the seizure. Id. The notice declared that:

Any person claiming a legal interest in the Defendant Property must file a verified Claim with the Court within 60 days from the first day of publication (May 10, 2018) of this Notice on this official government internet web site and an Answer to the complaint or motion under Rule 12 of the Federal Rules of Civil Procedure within 21 days thereafter. 18 U.S.C. § 983(h)(1) permits a court to impose a civil fine on anyone asserting an interest in property which the determines was frivolous.

Id. The notice also explained where to file a claim and also informed potential claimants that they could petition to have “all or part of the property from the forfeiture” pardoned and explained the rules for such action. Id.

No one filed an answer or claim. On July 25, 2018, the United States filed a request for entry of default as to the US Currency with the Clerk of Court. See dkt. # 10. The Clerk entered default on July 27, 2018. See dkt. # 11. The United States filed the instant motion for default judgment on July 31, 2018. See dkt. # 13. The United States served the motion on Guerrero, Andino, and Andino’s attorney. See dkt. #s 14-16. None of them filed a response.

The Court is to “[accept] as true all well pleaded allegations against a defaulting defendant for purposes of determining liability[.]” Finkel v. Romanowicz, 577 F.3d 79, 83 n.6 (2d Cir. 2009). The Court finds that the allegations in the Complaint, the lack of a challenge by the persons found in possession of the subject currency, the evidence of advertisement on a public website, and the documentary proof provided by the United

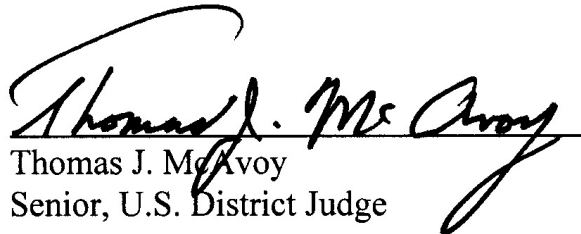
States are sufficient to establish liability and the amount of default. The Court will therefore GRANT the motion for default judgment, dkt. # 13. As such, it is hereby ORDERED that:

1. Judgment of Default is entered against the defendant currency;
2. the defendant currency is hereby forfeited to the United States; and
3. any claims to the defendant currency are hereby forever barred.

The Clerk of Court is directed to CLOSE the case.

IT IS SO ORDERED.

Dated: October 4, 2018


Thomas J. McAvoy
Senior, U.S. District Judge